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***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO. 1212 of 2007

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% 20.06.2007

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Between:

Perurupadu Fishermen Cooperative Society, Perurupadu, Bollapalli Mandal, Guntur District and another

... PETITIONERS

AND

The Government of Andhra Pradesh rep. By its Principal Secretary, Animal Husbandry, Dairy Development and Fisheries Department, Secretariat, Hyderabad, and four others.

...RESPONDENTS

! COUNSEL FOR THE PETITIONERS: Sri B. Adinarayana Rao

^ COUNSEL FOR THE RESPONDENTS: G.P. for Fisheries, Sri Gogineni Krupachand

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> Head Note:

? CITATIONS:

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO. 1212 OF 2007

DATE: 20.06.2007

BETWEEN

1. Perurupadu Fishermen Cooperative Society, Perurupadu, Bollapalli Mandal, Guntur District and one another

....Petitioners

AND

1. Government of Andhra Pradesh rep by its Principal Secretary, Animal Husbandry, Dairy Development & Fisheries Department, Secretariat, Hyderabad, four others

.... Respondents

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION NO. 1212 OF 2007

ORAL ORDER:

The first petitioner is the Fishermen Cooperative Society registered under the Cooperative Societies Act (for short 'the Act'), and the second petitioner is its President. The memo-dated 4.1.2007 issued by the Government, the first respondent herein, is challenged in this Writ Petition.

The facts that are relevant for disposal of the Writ Petition may briefly be stated as under:

The elections to the Managing Committee of the Society (for short 'the Society') were held on 25.7.2002. The second respondent submitted a complaint before the local police station on 14.9.2005 alleging that the records of the society were taken away by some unknown persons. The complaint was enquired into and ultimately the case was closed by the police on the ground that the investigation did not yield any results. A certificate dated 14.9.2005 to this effect was issued by the Police. Thereafter, the petitioner approached the Assistant Director of Fisheries, Guntur, the 4th respondent herein, with a request to permit him to open new records. Such a permission was accorded by the 4th respondent

through his proceedings dated 24.11.2005.

The 4th respondent and two others have approached this Court by filing Writ Petition No. 5820 of 2006 alleging that though they made two representations dated 24.8.2005 and 6.3.2006 to the respondents 2 and 3 herein no action has been taken so far. The grievance is that the records of the Society are very much available, and still new set of records was opened and in that process substantial number of members were omitted from the register.

Interim order was passed by this court in the said W.P. to the effect that no steps shall be taken by the society for the removal of members existing on the rolls. Thereafter, the 4th respondent and two others filed a representation dated 23.8.2006 before the Government, first respondent herein, representing their grievances. The first respondent in turn called for a report from the third respondent into the various aspects of the matter, including the controversy as to membership and the administration of the Society. A report dated 18.11.2006 was submitted by the third respondent. Based on the same, the Government issued the impugned memo directing that the second respondent shall take necessary steps for issuance of identity cards to 426 members of the society.

The Petitioner-Society challenges the impugned memo on several grounds, such as lack of power to issue the impugned memo, violation of principles of natural justice and non-deservence of the various steps, contemplated under the Act.

On behalf of the respondents 1 to 4 a counter affidavit and an additional counter affidavit are filed. It is stated that the impugned memo is issued in exercise of powers under Section 131

of the Act. It is also pleaded that before the proceedings came to be issued a detailed enquiry was conducted through respondent No. 3 and all the affected parties were given an opportunity to put forward their respective versions.

The fifth respondent, filed a counter affidavit. He submits that in addition 223 members were admitted at the inception of the Society and 203 more were admitted on 15.4.1995. He alleges that by resorting to various mechanisms, the petitioner society is trying to eliminate 203 members from the rolls.

Sri B. Adinarayana Rao, learned counsel for the petitioner submits that the impugned proceedings are not referable to any specific provision of Act, and the general power under Section 131 of the Act cannot be resorted to, in relation to individual disputes. He submits that even assuming that the 5th respondent has any grievance, at the most, it constitutes a dispute that could have been agitated in proceedings under Section 61 of the Act. He further points out that the enquiry report is not referable to provisions such as Sections 50,51 and 52 of the Act and in the whole episode, the first respondent has misused its powers. The learned counsel further points out that the petitioner was not put on notice before the third respondent recorded the findings and when the impugned order was passed.

The learned Government Pleader for Fisheries submits that having regard to the nature of dispute between two groups of the members of the society the Government has invoked its powers under Section 131 of the Act and that no exception can be taken to it. It is also urged that the petitioner cannot be said to have suffered any detriment and it was given ample opportunity, before the findings were recorded.

Sri B. V. Subbaiah, leaned counsel for the 5th respondent submits that the effort of his client is only to put the record straight. He contends that though the records of the society were very much available with his client, fictitious and false complaints were submitted, as though the records were stolen. He submits that the new records were opened with a view to eliminate large number of members.

The representation dated 23.8.2006 submitted by the 5th respondent and two others gave raise to the impugned memo. It is a matter of record that by the time, the first respondent took up the matter, the Writ Petition No. 5829 of 2006 filed by the 5th respondent, virtually for the same relief, is very much pending before this Court. Having obtained an interim order, the 5th respondent has chosen to move the machinery in the Government.

The 5th respondent requested the Government, the first respondent, to cause enquiry into six aspects. Acting thereupon, the first respondent directed the second respondent to seize the records relating to the society and to furnish a detailed report. The latter in turn obtained a report form the third respondent on the matter. A report was submitted on 18.11.2006

The allegation relating to the membership of the society reads as under:

> "Admission of new members and removal of old members without informing the General Body and Executive Committee".
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> The report submitted by the respondents 2 and 3 in this regard is to the following effect:
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> "As per the new records, the membership is 223 who were enrolled at the time of registration and the Managing Committee willfully hidden the admission

particulars of 203 members who were enrolled subsequently and continued as members from 15.4.1995 onwards, further they paid the share capital and admission fees and continuously participated in the meetings and elections conducted to the Managing Committee on 25.7.1997, 23.7.2002 and some of them were also elected to the Managing Committee in the elections held to the Society on the aforesaid dates. Present Managing Committee has willfully incorporated certain bogus Members in place of original members in the newly opened records. Further the audit report for the years 2002-02 and 2004-05 support the total membership of 426. There is no recorded evidence of committee meetings/General Body meetings in support of the show cause notice issued for removal of 203 members and return of share capital."

Taking this into account, the first respondent issued the following direction:

"In the circumstances stated above, Government , after careful consideration direct the Commissioner of Fisheries to arrange for issue of Identity cards to all the members i.e., 426 members of the Fishermen Cooperative Society, Parerupadu Village, Bollapally Mandal, Guntur District to avoid Bogus membership and ensure that no steps shall be taken for removal of the members who are existing, and report compliance."

The impugned memo is fairly detailed, in its content. However, the first respondent has not chosen to refer to any provision of the Act, that constituted the basis for this action.

A perusal of the report dated 18.11.2006 discloses that the third respondent has enquired into the functioning of the society, examined the matter and recorded its findings on several aspects. Here again, no provision is referred to.

It is not as if the Act is silent on these aspects. The Act, together with the Rules made thereunder, is a self-contained code. Ranging from registration of a Society to the liquidation thereof, it covers several aspects, such as, admission of members, election to the managing committee, resolution of election related disputes, supercession of elected committees, causing inspection audit, and enquiry to the affairs of the society, surcharge proceedings, resolution of disputes through arbitration and adjudication, conferment of appellate powers on the tribunal etc. The relevant provisions are so meticulous that the manner in which, each and every step is to be initiated, and carried further, are dealt with.

For instance, Section 50 provides for audit of the accounts of the society, to be caused by the Chief Auditor. The Registrar may on his own motion, or at the instance of society, can cause an enquiry, into the constitution and working of the Society under section 51. For this purpose there must be a requisition by 1/3 of the members of the Committee or by 1/5th of the total members. The report of the enquiry is required to be presented before the general body of the society and the manner in which the action is to be taken thereon is also provided. Similarly, inspection under Section 52 can be caused by the Registrar on his own motion or on the application of the Secretary of a Society. In addition to these specific steps, if there exist any disputes, members inter se or outsiders, except those, which relate to the employees of the society, are to be settled, in accordance with the procedure stipulated under Section 61 of the Act.

An appellate Tribunal is constituted under Section 75 and a revision is provided to the Registrar or the Government, as the case may be, under Section 77. The scope of adjudication under

the respective provisions is clearly delineated. There is hardly any category of disputes, which cannot be resolved under the mechanisms provided for under the Act. The role of the Government in the matter of resolution of such disputes arises only at the stage of revision. Therefore, there was absolutely no basis for the 5th respondent to approach the first respondent, much less for the latter, to have passed the impugned order, bypassing the specific and detailed procedure prescribed under the Act and the Rules.

An attempt is made to sustain the order by placing reliance on Section 131 of the Act. The provision reads as under:

> "131. Power of Government to give directions: (1) the Government may generally or in any particular matter under this Act, issue such orders and directions, which are in accordance with the provisions of this Act and in the interest of Cooperative movement in the State as they may consider necessary to the Registrar and thereupon he shall give effect to such orders or directions and shall report to the Government in due course the result thereof.
> (2) In any case, in which a direction has been given under sub-section (1), the Government may call for and examine the record of the proceedings of the Registrar and pass such orders in the case as they may think fit:
> Provided that before passing any order under this sub-section, the person likely to be affected by such order shall be given an opportunity of making his representation."

It is evident that it is meant to empower the Government to issue orders or directions of general nature, that too, to the Registrar. By no stretch of imagination, such a wide and

supervisory power can be invoked, to settle the disputes relating to membership in a Society. Further if disputes of this nature are dealt with under Section 131, the whole mechanism provided for under the Act, becomes redundant.

Another aspect of the matter is that neither the Government nor the respondents 2 and 3 have issued show cause notice to the petitioner, before the report is submitted or the impugned memo is issued. The fact that the third respondent conducted a general enquiry by asking the concerned to appear before him, hardly constitutes the compliance with the requirement of principles of natural justice. When a definite finding is recorded against the Society about the alleged irregularities or the lapses, as regards the maintenance of membership register, notice specifically referring to the alleged irregularities, ought to have been issued, that too by the authority conferred with the specific power. Hence, there is a clear violation of principles of natural justice.

For the foregoing reasons, the Writ Petition is allowed and the impugned memo is set aside. It is however made clear that it shall be open to the 5th respondent to pursue the remedies provided for under the Act. There shall be no order as to costs.

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L. NARASIMHA REDDY, J

Date: 20.06.2007
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Note: L.R. Copy to be marked.